



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 661

OCT 6 2006

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SUPERFUND RECORDS

Fred Molloy  
Unit Chief and Project Manager  
Kansas Department of Health and Environment  
Division of Environment  
Superfund Unit/Assessment and Restoration Section  
Curtis State Office Building  
1000 SW Jackson St., #410  
Topeka, KS 66612-1367

Site:	United Zinc No. 1
ID #	USN000705026
Break:	2.0
Other:	10/6/2006

*[Signature]*

Dear Mr. Molloy:

Re: State of Kansas Applicable or Relevant and Appropriate Requirements for a  
Time-Critical Removal Action at the United Zinc #1 Site, Iola, Kansas

In response to your letter dated August 28, 2006, in highlighting, the state of Kansas has identified the following as Applicable or Relevant and Appropriate Requirements (ARARs) for the United Zinc #1 Site:

- Ambient Air Quality Standards and Air Pollution Control Regulations (K.A.R. 28-19),
- Emergency Planning and Right-To-Know Act (K.A.R. 28-65)
- Environmental Use Controls (K.S.A. 65-1,221 to -235)
- Hazardous Waste Management Standards and Regulations (K.A.R. 28-31 to 28-31-16)
- Solid Waste Management (K.A.R. 28-29-1 to 28-29-121 and K.A.R. 28-29-2101 to -2113)
- Spill Reporting Act (K.A.R. 28-48)
- Water Pollution Control (K.A.R. 28-16)

The state also identified *Risk-Based Standards for Kansas, RSK Manual, March 2003*, as amended; *Evaluating Future Land Use*, KDHE BER Policy #BER-RS-005; *Consideration for Remedial Standards*, KDHE BER Policy #BER-RS-033; *Consideration of Groundwater Use and Applying RSK Standards to Contaminated Groundwater*, KDHE BER Policy #BER-RS-045; *Sediment Policy*, KDHE BER Policy #BER-ARS-045; and *Best Management Practices (BMPs) for Soils Technologies*, EPA530-R-97-007, May 1997 as To Be Considereds (TBCs).

EPA responds to the identification of these ARARs and TBCs as follows:

- EPA does not agree that K.A.R. 28-19 is an ARAR because this site is a temporary source and emits fugitive emissions. Even if the regulation were an ARAR, the only requirement is for a permit which is specifically not required pursuant to Section 121(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 4201 U.S.C. 9621(e) (CERCLA).
- K.A.R. 28-65-1,1,221 to 65 -1,235 pertaining to environmental use controls does not contain

ARARs for this site because the chapter does not contain substantive environmental requirements; it requires payment of fees and deed restrictions that are administrative in nature. EPA also understands the state of Kansas has a third-party agreement with site owners to satisfy these state administrative requirements.

- K.S.A. 28-31-1 to -16 pertaining to hazardous waste management contains substantive requirements at 28-31-1 to -31-5. EPA will comply with those regulations except for K.A.R. 28-31-5 pertaining to burial of hazardous waste, which is not applicable nor relevant and appropriate.
- K.A.R. 28-29-1 to -121 and -2101 to -2113 pertaining to solid waste management does not contain applicable nor relevant and appropriate requirement so are not ARARs with the exception of K.A.R. 28-29-21 regarding storage of solid wastes by owners or occupants. Any nonhazardous solid waste generated and/or disposed of from this site will be managed in accordance with the CERCLA Off-Site Policy.
- EPA will meet K.A.R. 28-48-1 to -2 since EPA will be transporting lead-contaminated soils failing Toxicity Characteristic Leachate Procedure (TCLP) within the state.
- EPA will meet the requirements for K.A.R. 28-16-28(e) by transporting soils to a facility that will treat soils using the TCLP to 5 mg/kg. There are no other ARARS stated in K.A.R. 28-16 for this site since other requirements were administrative in nature or required permits which are exempted by Section 121(e) of CERCLA.

Regarding the TBC state policies identified by KDHE:

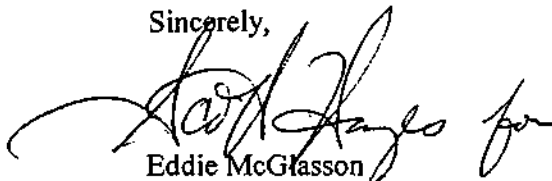
(1) EPA will satisfy Appendix A, KDHE Tier 2 of the Risk-Based Summary Table for lead as stated in the Risk-Based Standards for Kansas of 400 parts per million (ppm);

(2) Although Evaluating Future Land Use, KDHE BER Policy #BER-RS-005 is identified as a TBC, the policy is directed to remedial actions; EPA will consider this policy but is limited by the one year jurisdictional limit placed on removal actions;

(3) Consideration for Remedial Standards, KDHE BER Policy #BER-RS-033 is applicable to remedial actions; however, EPA has already stated it will comply with KDHE Risk Based Standards for Kansas of 400 ppm for lead.

(4) The Consideration for Groundwater Use and Sediment Policy identified by the state are not relevant at this soil removal action.

Sincerely,



Eddie McGlasson  
On-Scene Coordinator  
Emergency Response & Removal Branch

cc: Denise Roberts, CNSL